

California Regional Water Quality Control Board, Los Angeles Region
Special Board Meeting – February 19, 2002
Simi Valley, California

Item	6
Subject	Halaco Engineering Co. (Halaco), located at 6200 Perkins Road, Oxnard (File No. 70-24, CI-5673) (Figure 1).
Purpose	At the February 19, 2002 Board meeting, the Board will be asked to consider adoption of Item 6; a tentative Cease and Desist Order dated January 25, 2002, and also referred to herein as the negotiated tentative Cease and Desist Order (NTCDO).

Halaco's current smelting operations waste discharges are subject to Waste Discharge Requirements (WDR) contained in Order No. 80-58 adopted by this Regional Board on October 27, 1980. Board staff believe that Halaco may have failed to fully meet the waste discharge requirements (WDR) of Order No. 80-58. Order No. 80-58 addresses both site and facility assessments and designs and ongoing operational controls. Concerns of Board staff are further described herein under "Compliance Summary" and "Discussion".

Though Board staff have previously sought to review the WDR and to bring Halaco into compliance with Order No. 80-58, the efforts have been delayed due to extensive technical concerns and legal issues raised by Halaco. (Previous actions of the Regional Board and Halaco are described herein under "Regional Board Orders and Actions"). During the public session of a Board meeting on May 24, 2001, the Environmental Defense Center and Santa Barbara ChannelKeeper expressed concern about water quality impacts from Halaco's smelting operation. In response, the Board directed staff to provide information on the status of Halaco. Accordingly, staff presented an information item at the Board's public meeting on June 28, 2001, discussing Halaco's compliance status under its WDR, regulatory history, and staff concerns for protecting water quality. After receiving additional information from Halaco and the public, the Board directed staff to update Halaco's requirements for consideration by the Board in late August 2001. Board staff prepared tentative new waste discharge requirements (WDR) and a tentative cease and desist order (CDO) (the tentative items) for the October 4, 2001 Board meeting. However, Halaco submitted extensive comments on the tentative items and submitted a Report of Waste Discharge (ROWD) describing substantial proposed changes in its operations. Due to Halaco's comments and the prospective changes associated with the ROWD, the August 29, 2001, tentative items were withdrawn.

At a special meeting of the Board on November 13, 2001, Halaco submitted a "Progress Report" on its ROWD that provided additional information regarding its proposed change in operations. Subsequently, on December 30, 2001, Halaco submitted a "Revision of Halaco's ROWD and Further Progress Report". The ROWD and Revised ROWD encompass a significant change in Halaco's liquid effluent waste discharges to its Waste

Management Unit (WMU) and to the WMU itself. Halaco intends to install a filter press that will separate the solids from the water in Halaco's waste effluent and proposes to discharge the water separated from the solids to the City of Oxnard sewer system or alternatively, recycle their wastewater on site. Halaco has applied for the applicable industrial wastewater permit from the City of Oxnard. Halaco believes that the separated solid waste, which contains approximately 20% moisture, can be sold as a commercial product to outside entities. In any event, Halaco has represented that there will be no further discharges of any waste, liquid or solid, to Halaco's WMU, thus changing the WMU from a surface impoundment to a solid waste management unit (landfill). Given the fundamental changes contemplated and now being pursued by Halaco with respect to its waste discharge operations, Board staff withdrew the tentative waste discharge requirements and prepared a new tentative cease and desist order (tentative CDO) issued under Order No. 80-58. The new tentative CDO dated December 7, 2001, was circulated and scheduled to be heard at a January 9, 2002 hearing, which was subsequently continued to February 19, 2002.

On January 7, 2002, Halaco submitted extensive comments regarding the tentative CDO consisting of both legal and factual comments. Halaco, in its comments and thereafter in a series of prehearing conferences, made it clear that it had substantial objections to the tentative CDO, but was prepared to attempt to work out a negotiated tentative CDO. Halaco's objections took the form of both motions in limine and motions by way of objections that encompassed constitutional challenges, substantial legal challenges, and evidentiary challenges. Halaco also asserted that it was entitled to an adjudicatory hearing that would take substantially longer than a single day hearing, particularly given the proposed witnesses and documents to be relied upon by the various parties as well as examination and cross-examination of those witnesses.

PREHEARING CONFERENCES AND NTCDO

In spite of the legal defenses raised by Halaco and its objections to the December 7, 2001 tentative CDO, Halaco did acknowledge that it was prepared to work out an agreed tentative CDO which would enforce Order No. 80-58 and provide monitoring and sampling. As a result of numerous prehearing conferences and meetings involving the Board staff with Halaco and the Environmental Defense Center (EDC), a negotiated tentative CDO dated January 25, 2002 (NTCDO) was developed, which is hereby presented to the Board.

Extensive involvement of Halaco, EDC, and Board staff was essential in the development of this NTCDO. In September 2001, EDC requested that it be accorded full party status in the matter of Halaco. The Board granted the request, which Halaco did not formally oppose. As a party, EDC attended the hearings and meetings regarding the resolution of the issues of the CDO. Approximately 10 prehearing conferences and meetings have taken place

with Board staff, Halaco, and EDC dedicating a very substantial amount of time to the crafting and resolution of the NTCDO and other issues of concern. While EDC participated in the meetings to develop a negotiated tentative CDO, the CDO, as it is presented to the Regional Board, is not supported by EDC.

The NTCDO addresses requirements of Order No. 80-58, includes language requested by Halaco, and includes time schedule triggers. Halaco intends to:

- operate a filter press to dewater the slurry waste;
- discharge filter press wastewater to a local sanitary sewer;
- recycle the filter press solids as opposed to disposal to the WMU;
- change its WMU by first evaporating the water from its surface impoundment area; and then reconfigure the waste in the WMU and stabilize with soil and plants to address erosion control; and cease disposal to its WMU.

In written correspondence dated January 30, 2002, Halaco agreed, as party to the NTCDO which is now being presented to the Board (in lieu of the tentative CDO dated December 7, 2001), to an informal hearing and agreed to a limited withdrawal of its request for a formal adjudicated hearing. The NTCDO represents an agreement between Board staff and Halaco. EDC and the Santa Barbara ChannelKeeper, in written correspondence dated February 12, 2002, and received by Board staff on February 13, 2002, have "strenuously" objected to the NTCDO. However this agreement is tentative, subject to the Board itself adopting the NTCDO. While the Board has the absolute discretion to modify any or all of the findings or any of the provisions, any such change may mean that there is not an "agreed" NTCDO. In that circumstance, Halaco has indicated that it would insist upon an adjudicated hearing. An adjudicated hearing cannot be held on February 19, 2002, because of a number of legal issues that would have to be resolved.

Background

Since 1965, Halaco has operated a metals recycling plant, including a foundry, located on a 43-acre site along the coast of Oxnard¹ (Figure 2). The foundry, which produces aluminum and magnesium ingots, smelts non-ferrous² scrap (e.g. drosses³, skimings, and other scrap) in large furnaces, using a flux of chlorides of magnesium, sodium and potassium to separate metals from metal oxides and other impurities. In order to remove

¹ Prior to commencing operations in the City of Oxnard in 1965, Halaco operated a foundry in the City of Gardena. Halaco moved its operations in 1965 to a coastal location in Oxnard "where temperatures would be lowered naturally, there was no danger of polluting potable water, and disposal of the waste ... would be lawful." [42 Cal.3d 52 at 58-59, California Supreme Court]

² Non-ferrous: not made of or containing iron.

³ Dross: 1. a scum formed on the surface of molten metal 2. waste matter,

contaminants (dirt and other impurities) from the scrap prior to smelting, Halaco washes the scrap with water diverted from the Oxnard Industrial Drain. After smelting, Halaco tries to recover more aluminum and magnesium by washing the slag (a by-product from the smelting). Through the washing process, Halaco generates large volumes of wastes – specifically 472,000 gallons/month of slurry. This slurry consists of:

- a wastewater containing metals, salts, and ammonia, and
- suspended solids (7% by weight, according to Halaco), consisting of undissolved metal oxides, dirt, and other impurities.

Halaco's liquid effluent slurry is discharged to its surface impoundment consisting of three settling ponds within the WMU (Figure 3), under the WDR prescribed in Order No. 80-58. The discharge to the surface impoundment is for purposes of allowing the suspended solids to settle out from the liquid effluent. Halaco contends that during the settling process the water evaporates from the settling ponds. Board staff contend that in addition to evaporation, water in the pond can percolate to groundwater. The settled solids are periodically dredged out of Halaco's settling ponds. The deposition of the solids has increased the height of the berms of its surface impoundment and the WMU, including the waste disposal area located immediately north of its surface impoundment. As a result of allowing the suspended solids to settle from the wastewater and in the dredging of settled solids and placing them on the berms of its surface impoundment, the surface impoundment berms have increased in height to a level of approximately 40 feet.

In addition to the wastewater and solids in Halaco's slurry, radioactive solids from scrap containing thorium are also believed to be present at the Halaco site. Halaco received such scrap in the 1970s and possibly up until 1978.

Regional Board Orders and Actions

Order No. 70-63: On September 23, 1970, the Board issued Order No. 70-63, specifying waste discharge requirements for discharge of Halaco's wastes.

Order No. 80-58: On October 27, 1980, despite Halaco's objections, the Board adopted new requirements by issuing Order No. 80-58. Halaco, as well as the California Department of Fish & Game, then petitioned the Regional Board's action (for differing reasons) to the State Board. The State Board issued Order No. WQ 81-14 upholding Order No. 80-58 with modifications. Order No. 80-58 contains the current WDR for Halaco's disposal operation.

Tentative WDR and CDO dated June 26, 2000: Order No. 80-58 is one of Region 4's older permits and while it has no specific effluent limitations, it does represent a zero off-site discharge permit. Furthermore, Order No. 80-58 does not reflect amendments to the Basin Plan and other post-1980 regulations. Accordingly, staff proposed revised requirements in tentative Orders issued in June 2000, which included a requirement for a liner under the WMU. However, in response to Halaco's request for extensive time for formal proceedings before the Board, staff was unable to present the tentative Orders to the Board for consideration. On August 30, 2001, staff withdrew the June 26 tentative orders.

Tentative WDR and CDO dated August 29, 2001: Tentative Orders were issued in August 2001, which replaced the June 2000 tentative Orders. However, after these tentative Orders were issued, Halaco, on October 29, 2001, submitted an ROWD stating that it proposes to significantly change its waste handling and disposal process. Accordingly, staff withdrew the August 29 tentative Orders and circulated a new tentative CDO on December 7, 2001. Staff has also submitted comments to Halaco regarding the deficiencies of the ROWD.

Tentative CDO dated December 7, 2001: A tentative CDO was issued without a tentative WDR, but which would require compliance with the existing WDR (Order No. 80-58). Halaco submitted considerable objections to this tentative CDO.

Negotiated Tentative CDO dated January 25, 2002: This NTCDO represents the extensive efforts of Board staff in face to face discussions with Halaco and the Environmental Defense Center (EDC). Board staff believe that this NTCDO substantially addresses the requirements of Order No. 80-58 and compliance issues, and incorporates language requested by Halaco which is acceptable to Board staff. EDC and Santa Barbara ChannelKeeper, in correspondence dated February 12, 2002, has objected to this NTCDO.

Compliance Summary

The existing WDR (Order No. 80-58) contain provisions which Board staff believe that Halaco has been in violation of, as highlighted below.

- Incomplete operation plan: Board staff believe Halaco has failed to fully submit a complete operation plan (e.g., measures for control of drainage, leachate and gases) (section B.2).
- Incomplete demonstration of hydraulic barriers: Board staff believe Halaco has failed to conclusively demonstrate that positive hydraulic barriers with permeabilities of 1×10^{-6} cm/sec or less are present beneath and around the pond and berms.

- Poorly maintained monitoring wells: Board staff believe Halaco has failed to properly maintain groundwater monitoring wells (Monitoring and Reporting Program No. 5673).
- No standing water sampling: Board staff believe Halaco has not conducted monitoring in the event standing water is discovered outside of but within 25 feet of the containment dikes or berms (Monitoring and Reporting Program No. 5673).
- Failed seepage prevention: Board staff believe Halaco has not constructed the barriers with collection drains and sumps to intercept all seepage (section A.6).
- Eroded slopes: Board staff believe Halaco has failed to prevent erosion of the slopes on the berms of the surface impoundment (section A.7).
- Incomplete and late reports of self-monitoring: Board staff believe that Halaco has failed to comply with Order No. 80-58 which specifies that Halaco must submit quarterly reports of self-monitoring. Of the 21 reports reviewed (submitted since the 4th quarter of 1997 through the 4th quarter of 2000), 19 reports were submitted late, 10 reports were missing perjury statements, and 14 reports contained sampling results at incorrect locations. Staff issued a NOV, dated April 12, 2001, for these violations.

In addition, with regard to compliance with General Permit (Order No. 97-03) for industrial stormwater discharges, Halaco may have failed to conduct adequate stormwater monitoring at the site and effectively exercise "best management practices" in its Storm Water Pollution Prevention Plan (SWPPP).

In addition to the violations noted above, information is seen to be deficient regarding observable protective measures to prevent against 100-year floods and tides.

Halaco submitted substantial comments and referenced reports to the effect that there were neither actual nor apparent violations. Halaco asserts that there is not sufficient evidence to conclude that there are actual violations of Order No. 80-58, but simply evidence reflecting possible violations. Subsequently, the word "apparent" has been used to describe violations and has been utilized in the NTCDO Findings 13, 14, 15, 17, 19, 22, and in the "Order" provision on the last paragraph on Page 10 of the NTCDO.

Finding 22 of the NTCDO was also added at the behest of Halaco. Finding 22 acknowledges Halaco's limited acceptance of the Findings and the statements indicating apparent or possible violations by Halaco.

EDC has objected to the inclusion of this Finding and also to the use of the word "apparent" to describe the alleged violations.

Other Concerns

Staff believes the potential for migration of pollutants from the Halaco site exists or has already occurred, based on the following:

- In a Phase II environmental site assessment conducted by Ninyo & Moore Geotechnical and Environmental Sciences Consultants in 1997, a small number of samples were taken from the Metropolitan Water District of Southern California property located adjacent to Halaco. The study reports that samples obtained adjacent to Halaco's property line have higher concentrations of metals (barium, copper, lead, nickel, zinc, etc) than samples taken from other locations.
- Inadequate stormwater management may have contributed to offsite migration.

Although the above referenced Ninyo & Moore report does not provide a scientifically definite conclusion, staff believe that the data contained therein suggests that there is a potential that pollutants may have been released from the Halaco site and impacted adjacent land areas. Halaco has strongly opposed this suggestion. Halaco claims that mercury is not found in Halaco's waste, that the other specified metals are not found in Halaco's waste in proportion to what they were reported, and that the elevated levels of the specified metals were from sources other than Halaco.

Receiving Waters

The Halaco site is located along a stretch of the Pacific Ocean. It is adjacent to Ormond Beach and the Ormond Beach Wetlands (including a lagoon) along the coast, and is crossed by the Oxnard Industrial Drain. Also, the site overlies shallow groundwater which may be in hydraulic connection with the surface waters mentioned above.

- Ormond Beach Wetlands: In the June 13, 1994, revised *Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan)* on page 2-18, the Regional Board has designated the following existing uses for the Ormond Beach Wetlands: habitat for estuarine and wetland ecosystems, wildlife, and rare, and threatened and endangered species; as well as contact and non-contact water recreation.

The status of these wetlands (whether or not they are "jurisdictional" and subject to section 404 of the Clean Water Act) has been a matter of dispute between Halaco and the US Army Corps of Engineers. A

court has ruled in favor of Halaco, and the wetlands are not considered "jurisdictional" at this time.

- Ormond Beach: Also on page 2-18 of the *Basin Plan*, the Regional Board has designated many existing uses for Ormond Beach, among which include: contact and non-contact water recreation; habitat for marine ecosystems, wildlife, and rare threatened and endangered species; navigation; shellfish harvesting; and commercial and sport fishing.
- Oxnard Industrial Drain: This channel was constructed around the turn of the 20th century to drain agricultural areas, including an area supporting a sugar processing plant that discharged wastewater. It is 4 miles in length, and drains about 6,000 acres in eastern Oxnard before emptying into the Ormond Beach Wetlands (see beneficial uses described above). Although the *Basin Plan* does not specifically identify the Oxnard Industrial Drain, beneficial uses designated for downstream waters (Ormond Beach and the Ormond Beach Wetlands) would apply to the Oxnard Industrial Drain, using the "tributary rule."
- Groundwater: Groundwater underlying the site is part of the aquifer system underlying the Oxnard Plain. On page 2-16 of the *Basin Plan*, the Regional Board has designated the following existing beneficial uses of this ground water: municipal and domestic supply (i.e. drinking water), and agricultural supply. In addition, the Board has designated industrial service supply as a potential use of groundwater. Although Order No. 80-58 contained a statement that beneficial uses of a perched aquifer under Halaco's site was of limited use due to sea water intrusion, more recent studies have indicated that sea water intrusion is not primarily responsible for salinity in aquifers inland of the coast.

Discussion

As described above, Halaco's washing process generates a slurry. This slurry contains two types of waste that are of concern to staff: a wastewater containing metals and ammonia, and solids which settle out of the slurry. In addition, staff are concerned about the radioactive constituent thorium present in radioactive solids in scrap that Halaco may have accepted in the 1970s.

As described in the "Compliance Summary" herein, Halaco is alleged to be in violation of its existing WDR. The existing WDR requires full containment of wastes in order to protect receiving waters. Staff are concerned that Halaco may not be fully containing wastes, and that the existing monitoring and reporting program is not capable of providing needed information to evaluate the site impacts to surface water and groundwater.

As Halaco will not be able to immediately fulfill the requirements of Order No. 80-58, Regional Board staff, in conjunction with Halaco, have drafted the NTCDO with a time schedule for achieving compliance. These requirements direct Halaco to submit workplans and technical reports which include time

schedules for implementation of studies and/or corrective actions. These reports, which will be subject to Executive Officer approval, include:

- a workplan for the design and installation of drains and sumps with leachate collection and treatment;
- a plan detailing erosion control activities and implementation for the waste piles;
- a workplan for a comprehensive groundwater and surface water monitoring program at Halaco's facility;
- an engineering and land survey of the site;
- a study for evaluating slope stability and flood structural stability of the reconfigured waste management unit;
- an interim technical report and operations plan for removal of waste to offsite locations;
- if Halaco fails to evaporate water from its surface impoundments within eight calendar months of the adoption of the NTCDO, a workplan for fully characterizing the site and evaluating hydraulic barriers and any natural geologic material serving as a liner and its continuity around and under the waste management unit; and
- a report characterizing Halaco's deposited solid waste in the WMU.

Once the wastes and site impacts have been fully characterized pursuant to the efforts required in the NTCDO, the existing WDR may be revised, or in the case of final closure, may be replaced by closure plan requirements.

The NTCDO does not match item for item the time schedule provisions of the December 7, 2001, tentative CDO, but does still address the provisions of Order No. 80-58. However, as noted above, the NTCDO includes a provision that requires the complete cessation of discharge by November 1, 2002.

Other Developments

Third Party Litigation: In November 2000, Santa Barbara ChannelKeeper, represented by the Environmental Defense Center, filed suit against Halaco in federal court alleging violations of the Clean Water Act as well as the Clean Air Act. In January 2001, these same parties filed an additional lawsuit alleging continuing violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, for knowingly exposing persons to chemicals known to cause cancer and reproductive toxicity. Alleged chemicals of concern include lead, nickel and diesel exhaust and radioactive thorium 230 in the soil, groundwater and surface water. No settlement or court ruling has yet occurred.

The Environmental Defense Center has also been party to the Regional Board's prehearing conferences and meetings with Halaco concerning the NTCDO.

Comments

Extensive comments were received from Halaco with respect to technical, legal, and procedural issues with the December 7, 2001 tentative CDO and the public hearing. Written comments were also received from neighboring residents and the Environmental Defense Center.

Halaco has not expressed any objections to the NTCDO. In correspondence dated January 30, 2002, Halaco agreed to waive its right to a formal evidentiary hearing with respect to the "agreed" NTCDO as it now exists and agreed to the hearing date of February 19, 2002. However, Halaco maintains that if the Board declines to issue the NTCDO or if the Board requests any change to which Halaco does not agree, that the NTCDO will be set aside and an evidentiary hearing will be held at a future date to consider the December 7, 2001, tentative CDO.

EDC and Santa Barbara ChannelKeeper, in correspondence dated February 12, 2002, have strenuously objected to this NTCDO. They object to the inclusion of Finding 22 (acknowledgement of Halaco's limited acceptance of Findings) and to the use of the word "apparent" to describe violations noted by Board staff. They further state that the factual findings portray Halaco's lack of compliance as subject to debate and that the NTCDO undermines the Board's enforcement authority.

Conclusions

Board staff believe that the NTCDO substantially addresses the requirements of Order No. 80-58 and the December 7, 2001 tentative CDO, and incorporates language requested by Halaco which is acceptable to Board staff.

The NTCDO has extensive provisions which are designed to change Halaco's WMU and operation from one receiving and disposing liquid waste effluent to one which constitutes a landfill, and as to the latter, ensures that there will be no migration of waste from the landfill and proper closure will be implemented. In addition, it ensures that the Board will obtain additional information by characterization of Halaco's waste as well as monitoring of groundwater and surface water to determine the impacts of past disposal practices at Halaco. The NTCDO time schedule also addresses erosion control.

Recognizing the NTCDO is the result of extensive discussions that reflect Board and Halaco concerns, it is recommended that the Board adopt it without attempting to impose material changes. If the Board rejects the NTCDO, a formal adjudicated hearing will have to be conducted to consider the December 7, 2001 tentative CDO.

Options

- a. No action – Would allow Halaco the flexibility to continue operations as in the past, and the Board would be unable to obtain conclusive information concerning past and on-going impacts to water quality and beneficial uses.
- b. Adopt the January 25, 2002, negotiated tentative CDO (NTCDO) – This will provide information needed to evaluate the ability of Halaco to contain its wastes and will mandate Halaco to implement site improvements to ensure that Halaco's wastes do not impact adjacent waters. Should Halaco not be able to demonstrate full containment of wastes, the Board may require remediation actions that will be protective of beneficial uses in the receiving waters. The NTCDO will require the following:
 - a workplan for the design and installation of drains and sumps with leachate collection and treatment;
 - a plan detailing erosion control activities and implementation for the waste piles;
 - a workplan for a comprehensive groundwater and surface water monitoring program at Halaco's facility;
 - an engineering and land survey of the site;
 - a study for evaluating slope stability and flood structural stability of the reconfigured waste management unit;
 - an interim technical report and operations plan for removal of waste to offsite locations;
 - if Halaco fails to evaporate water from its surface impoundments within eight calendar months of the adoption of the CDO, a workplan for fully characterizing the site and evaluating hydraulic barriers and any natural geologic material serving as a liner and its continuity around and under the waste management unit; and
 - a report characterizing Halaco's deposited solid waste in the WMU; and
 - Halaco to cease and desist from any disposal operation with respect to its WMU by November 30, 2002.

If the NTCDO is adopted by the Board, EDC and Santa Barbara ChannelKeeper could petition the SWRCB and there could be followup court litigation.

However, Board staff recommend that the Board adopt the NTCDO.

- c. Reject the NTCDO - The Board would then be put in a position of having to conduct a potentially lengthy and burdensome formal evidentiary hearing on the contested December 7, 2001 tentative CDO. This would mandate additional staff and time resources for preparation. Any subsequent CDO as adopted by the Board to which Halaco does not agree, could result in extensive and lengthy efforts needed to respond to petitions to the SWRCB thru extended court litigation.

Attachments

Negotiated Tentative Cease and Desist Order

Comment letters

Halaco letter (Mitchell, Silberberg & Knupp LLP) dated January 30, 2002

California AssemblyMember, Fran Pavley letter dated February 4, 2002

EDC and Santa Barbara ChannelKeeper letter dated February 12, 2002

Halaco letter (Mitchell, Silberberg & Knupp LLP) dated February 13, 2002